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NICOLAS, et al. and Other Similarly
Situated and Aggrieved Employees

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JERICO NICOLAS an individual,
et al., On Behalf of Themselves and
All Others Similarly Situated and
Aggrieved;

Plaintiffs,

v.

UBER TECHNOLOGIES, INC, a
Delaware Corporation; and DOES 1
through 10,

Defendants.

CASE NO.: 4:19-cv-08228-PJH

CLASS ACTION – ~~SECOND-THIRD~~
AMENDED COMPLAINT FOR
DAMAGES, PENALTIES,
ATTORNEYS FEES, AND
INJUNCTIVE RELIEF FOR, *INTER*
***ALIA*, LABOR CODE WAGE AND**
HOURLY VIOLATIONS

DEMAND FOR JURY TRIAL

1 Plaintiffs Jericho Nicolas, Juan Montalvo, Gary Baumgarten, Christine
 2 Tringali, Carlos Alvarez, Rick Anderson, Kamal Suri, Jorge Jimenez, Jaime Del
 3 Real, Lisette Castillo, Benjamin Laney, Kelly Clifton, Eric Calvillo Hernandez,
 4 Steven Robert Callahan, Juan Jamarron, , Richard Trujillo, Marcos Montes, Barton
 5 Lasheem, Dora Waters, , Rolando Vega, Shamar Drew, Zuleyma Torres, Sevak
 6 Vartanpour, Claudia Duque, Timothy Kershaw, Kevin Byler, Yhon Lara, Royal
 7 Gaston, Majd Iskandafi, Alexi Vinnik, , Bryant Castaneda, Christine Economos,
 8 Carlos Torres, Christopher Campana, Gustavo Candelo, James Sparks, Jason Casas,
 9 Jose Contreras, Juan Castro, Kamal Suri, Karen Y. Alvarez, Syed Naqvi, Wayne
 10 Merritt, Williams Ramirez, Laura Alvarado Hernandez, Sherif Bebawy, on behalf
 11 of themselves only (collectively referred herein as "Non-Representative Plaintiffs")
 12 and Mark Glinoga, Kevin Neely and Alexis Gonzalez (Glinoga, Neely and
 13 Gonzalez shall be, from time to time, collectively referred to as "Plaintiffs") on
 14 behalf of themselves and acting for the interests of other current and former
 15 employees, allege as follows:

16 **NATURE OF THE ACTION**

17 1. This is a wage and hour class action pursuant to California Code of
 18 Civil Procedure § 382, on behalf of Plaintiffs and all individuals working or having
 19 worked as "ride-share drivers" ("Class Members") for Defendant UBER
 20 TECHNOLOGIES, INC., (hereinafter "UBER" or "DEFENDANT EMPLOYER")
 21 within the State of California. The Non-Representative Plaintiffs seek a remedy for
 22 their respective individual claims only and will pursue those claims through
 23 arbitration.

24 2. Plaintiffs are informed and believe and, based thereon allege, that the
 25 Class Members consist of approximately 50,000-75,000 current and former UBER
 26 employees who worked as UBER "ride-share drivers" and who opted out of the
 27 arbitration provision.

28 //

1 3. From at least April 2018, when the *Dynamex* decision was issued by
 2 the California Supreme Court, and continuing to the present, and pursuant to
 3 company policy and/or practice and/or direction, UBER failed to pay Plaintiffs and
 4 other Class Members minimum wage and/or overtime, and UBER did not reimburse
 5 for work-related expenses, such as mileage and cell phone usage.

6 4. From at least April 2018 and continuing to the present, and pursuant to
 7 company policy and/or practice and/or direction, UBER intentionally misclassified
 8 Plaintiffs and other Class Members as independent contractors when they were
 9 employees under the law.

10 5. From at least April 2018 and continuing to the present, and pursuant to
 11 company policy and/or practice and/or direction, for certain Plaintiffs and other
 12 Class Members, UBER failed to: (1) provide final paychecks immediately upon
 13 involuntary termination or within 72 hours of voluntary separation; (2) pay final
 14 wages at the location of employment; and (3) include all wages due in the final
 15 paychecks.

16 6. Plaintiffs, on behalf of themselves and all Class Members, bring this
 17 action pursuant to California Labor Code §§ 201, 203, 226, 226.8, 510, 1197,
 18 2082, 2750.3, 2698 et seq., 2998 et seq., California Code of Regulations, Title 8, §
 19 11050, and Industrial Welfare Commission Wage Order No. 4, for unpaid wages,
 20 penalties, injunctive and other equitable relief, and reasonable attorneys' fees and
 21 costs.

22 7. Plaintiffs, on behalf of themselves and all Class Members, pursuant
 23 to Business & Professions Code §§ 17200-17208, also seek injunctive relief,
 24 restitution, and other available relief for the violations alleged in this Complaint.

25 **JURISDICTION AND VENUE**

26 8. This Court has jurisdiction over the subject matter of this action
 27 pursuant to 28 U.S.C. § 1332 et. seq. This action arises under the Class Action
 28 Fairness Act ("CAFA") because at least one Class Member is a citizen of a different

1 state than the Defendants, the amount in controversy exceeds \$5,000,000.00,
 2 exclusive of interests and costs, and none of the exceptions of the CAFA apply.
 3 Furthermore, jurisdiction is proper in this Court because the amount in controversy
 4 exceeds \$75,000.00, exclusive of interests and costs, and the dispute is between
 5 citizens of different States.

6 9. This Court has personal jurisdiction over UBER because UBER
 7 conducts business in California, is headquartered in California, and because the
 8 events or transactions giving rise to this action occurred within California.

9 10. Pursuant to 28 U.S.C. § 1391(b), venue is proper in the U.S. District
 10 Court for the Northern District of California because UBER maintains its
 11 headquarters in the City of San Francisco, County of San Francisco, and UBER
 12 conducts significant business in this District.

13 **PARTIES**

14 11. The named Plaintiffs and Non-Representative Plaintiffs Jericho
 15 Nicolas, Juan Montalvo, Gary Baumgarten, Christine Tringali, Carlos Alvarez, Rick
 16 Anderson, Kamal Suri, Jorge Jimenez, Jaime Del Real, Lisette Castillo, Benjamin
 17 Laney, Kelly Clifton, Eric Calvillo Hernandez, Steven Robert Callahan, Juan
 18 Jamarron, Mark Glinoga, Richard Trujillo, Marcos Montes, Barton Lasheem, Dora
 19 Waters, Kevin Neely, Rolando Vega, Shamar Drew, Zuleyma Torres, Sevak
 20 Vartanpour, Claudia Duque, Timothy Kershaw, Kevin Byler, Yhon Lara, Royal
 21 Gaston, Majd Iskandafi, Alexi Vinnik, Alexis Gonzalez, Bryant Castaneda,
 22 Christine Economos, Carlos Torres, Christopher Campana, Gustavo Candelo,
 23 James Sparks, Jason Casas, Jose Contreras, Juan Castro, Kamal Suri, Karen Y.
 24 Alvarez, Syed Naqvi, Wayne Merritt, Williams Ramirez, Laura Alvarado
 25 Hernandez, Sherif Bebawy are each a natural person and a citizen of the State of
 26 California.

27 12. Defendant UBER TECHNOLOGIES, INC. (hereinafter “UBER” or
 28 “DEFENDANT EMPLOYER”) is, and at all times herein mentioned, was a

1 Delaware corporation, with the capacity to sue and to be sued, and doing business,
 2 with the same principal place of business located at 1455 Market Street, #400, San
 3 Francisco, California 94103.

4 13. The true names and capacities of the Defendants named herein as
 5 DOES 1 through 10, inclusive, whether individual, corporate, partnership,
 6 association, or otherwise, are unknown to Plaintiffs who therefore sue these
 7 Defendants by such fictitious names. Plaintiffs will request leave of court to amend
 8 this Complaint to allege their true names and capacities at such time as they are
 9 ascertained.

10 14. Plaintiffs are informed and believe and, thereon allege, that each of the
 11 Defendants herein were at all times the agent, employee, or representative of each
 12 remaining Defendant and were at all times herein acting within the scope and
 13 purpose of said agency and employment. Plaintiffs further allege that as to each
 14 Defendant, whether named or referred to as a fictitious name, supervised, ratified,
 15 controlled, acquiesced in, adopted, directed, substantially participated in, and/or
 16 approved the acts, errors, or omissions, of each remaining Defendant.

17 **GENERAL ALLEGATIONS**

18 15. Defendant UBER developed and maintains a technology platform that
 19 connects riders with ride-share drivers, such as Plaintiffs and all Class Members
 20 herein, through an application on their respective mobile devices.

21 16. UBER charges the rider a fee and uses a portion of the money collected
 22 from the rider to pay Plaintiffs and all Class Members herein.

23 17. UBER's business model is inextricably linked to the work of Plaintiffs
 24 and all Class Members herein transporting the riders, as UBER collects money from
 25 a rider after the rider utilizes a Plaintiff or Class member through UBER's
 26 application.

27 18. Without the Class Members' work in transporting paying-riders,
 28 UBER would not exist as it is known today.

1 19. Since the inception of UBER’s ride-sharing service, Class Members
2 have been treated as independent contractors so that they are not entitled to any of
3 the protections an employee would have under California law.

4 20. In April 2018, the California Supreme Court, in the now-infamous
5 *Dynamex* decision, ruled that companies must successfully meet the three prong
6 “ABC” test in order to lawfully classify someone as an independent contractor for
7 purposes of Wage Order claims. *Dynamex Operations West v. Superior Court*, 4
8 Cal.5th 903 (2018); see also *Garcia v. Border Transportation Group, LLC*, 28 Cal.
9 App. 5th 558 (2018). The ABC test requires an employer to prove the following to
10 justify “independent contractor” classification: (A) the worker is free from the
11 control and direction of the hiring entity in the performance of the work, both under
12 the contract for the performance of the work and in fact; (B) the worker performs
13 work that is outside the usual course of the hiring entity’s business; and (C) the
14 worker is customarily engaged in an independently established trade, occupation,
15 or business of the same nature as the work performed for the hiring entity. See
16 *Dynamex*, at 958-963.

17 21. On September 18, 2019, California Governor Gavin Newsom signed
18 Assembly Bill 5 (“AB5”), commonly referred to as the “gig worker law.” AB5
19 codified *Dynamex*’s ABC Test under the soon-to-be-added Labor Code § 2750.3,
20 creating a rebuttable presumption that a worker is an employee unless the test is
21 met, and explicitly exempted certain trades and professions. Neither the Class
22 Members or ride-share companies, like UBER, were exempted under AB5.¹

23 22. Leading up to AB5’s passage, UBER declared it would continue to
24 treat its drivers, like Plaintiffs and Class Members herein, as independent
25

26
27 ¹ California Legislature, *Assembly Bill 5: employees and independent contractors*,
28 “Today’s Law As Amended.” https://leginfo.ca.gov/faces/billCompareClient.xhtml?bill_id=201920200AB5 (accessed Oct. 31, 2019).

1 contractors after AB5 becomes law: “just because the [ABC] test is hard does not
2 mean [UBER] will not be able to pass it.”²

3 23. Since the April 2018 *Dynamex* decision, and after not being exempt
4 from AB5, UBER continues and will continue to treat Plaintiffs and Class Members
5 as independent contractors despite UBER’s inability to meet the ABC test.

6 **PLAINTIFFS AND CLASS MEMBERS ARE UBER’S EMPLOYEES**

7 **24. Plaintiffs Are Not Free of the Control & Direction of UBER in**
8 **the Performance of Work.**

9 25. For all relevant times, without any input from Class Members, UBER
10 controls and directs the terms and conditions of the Class Members work
11 equipment, work environment, the way work is performed, and the manner in
12 which drivers behave towards riders.

13 26. For all relevant times, UBER controls and directs the performance of
14 work of Class Members by way of minimum vehicle requirements for vehicles a
15 driver can utilize before allowing access to riders through its application.
16 Specifically, UBER has the following vehicle requirements:

- 17 • 15-year-old vehicle or newer
- 18 • 4-door vehicle
- 19 • Good condition with no cosmetic damage
- 20 • No commercial branding
- 21 • Pass a vehicle inspection.³

22 27. For all relevant times, UBER controls and directs the performance of
23 work of Class Members by way of minimum cosmetic guidelines for vehicles a
24
25

26 ² Uber Newsroom, “Update on AB5,” Sept. 12, 2019, <https://www.uber.com/newsroom/ab5-update/> (accessed Oct. 31, 2019).

27 ³ “Vehicle Requirements,” [https://www.uber.com/drive/los-angeles/vehicle-](https://www.uber.com/drive/los-angeles/vehicle-requirements/)
28 [requirements/](https://www.uber.com/drive/los-angeles/vehicle-requirements/) (accessed Oct. 30, 2019.)

ride-share driver can utilize before allowing access to riders through its application. Specifically, UBER prohibits:

- Full-body wraps containing advertisements, or any large ads
- Holes in exterior
- Taxi decals or taxi-style paint
- Significant damage to interior (torn seats, large permanent stains, strong permanent odors)
- Paint Oxidation
- Different colored hoods/doors
- Aftermarket modifications
- Window tinting must be within acceptable California regulations.⁴

28. For all relevant times, UBER controls and directs the performance of work by determining the minimum experience for Class Members in that they all must “meet the minimum age to drive in [their] city; [and] [h]ave at least one year of licensed driving experience in the US (3 years if you are under 23 years old).”⁵

29. For all relevant times, UBER controls and directs the performance of work of Class Members by requiring successfully passing a background check.⁶ Upon information and belief, UBER will not allow a driver to work as its ride-share driver if the background check reveals either of the following: (1) any major moving violations within the last seven years; (2) more than three minor moving violations in the last three years; or (3) a criminal conviction within the last seven years for a felony, violent crime, or sexual offense.⁷

⁴ *Id.*

⁵ “Driver Requirements,” <https://www.uber.com/us/en/drive/requirements/>

⁶ *Id.*

⁷ “What Disqualifies Drivers During an Uber Background Check,” <https://www.ridester.com/uber-background-check/> (accessed Oct. 31, 2019.)

1 30. For all relevant times, UBER controls and directs the performance of
2 work of ride-share drivers by requiring a vehicle used by a Class Member to have
3 a certain level of cleanliness.⁸

4 31. For all relevant times, UBER controls and directs the performance of
5 work of Class Members by setting limits on how long a ride-share driver can drive
6 as an UBER driver before UBER will have the application go “offline” for a
7 driver.⁹

8 32. For all relevant times, UBER controls and directs the performance of
9 work of ride-share drivers by requiring its drivers to provide a 5-star experience
10 by maintaining high standards of quality that can be taught by UBER approved
11 services.¹⁰

12 33. **Plaintiffs Do Not Perform Work Outside the Usual Course of**
13 **UBER’s Business.**

14 34. For all relevant times, UBER’s usual course of business is the
15 transportation of people. In UBER’s own words:

16 What started as a way to tap a button to get a ride has
17 led to billions of moments of human connection as
18 people around the world go all kinds of places in all
19 kinds of ways with the help of our technology . . .
20 ***Transportation isn’t the only thing we’re changing***
21 ***through our technology.***¹¹ On-demand transportation
22 technology is our core service, and the app that

22 ⁸ “Keeping Your Vehicle Clean,” [https://help.uber.com/partners/article/](https://help.uber.com/partners/article/keeping-your-vehicle-clean?nodeId=39695c4b-aafa-443a-a99f-1567d7215db6)
23 [keeping-your-vehicle-clean?nodeId=39695c4b-aafa-443a-a99f-1567d7215db6](https://help.uber.com/partners/article/keeping-your-vehicle-clean?nodeId=39695c4b-aafa-443a-a99f-1567d7215db6).
(accessed Oct. 31, 2019.)

24 ⁹ “Driver Time,” [https://help.uber.com/partners/article/driving-](https://help.uber.com/partners/article/driving-time?nodeId=c8785b5d-e2eb-42be-8c99-000d111e06d0)
25 [time?nodeId=c8785b5d-e2eb-42be-8c99-000d111e06d0](https://help.uber.com/partners/article/driving-time?nodeId=c8785b5d-e2eb-42be-8c99-000d111e06d0). (accessed Oct. 31, 2019.)

26 ¹⁰ “Quality Improvement Courses,” [https://help.uber.com/partners](https://help.uber.com/partners/article/quality-improvement-courses?nodeId=9deed9cc-6221-43f8-b699-aaf0d0653569)
27 [/article/quality-improvement-courses?nodeId=9deed9cc-6221-43f8-b699-](https://help.uber.com/partners/article/quality-improvement-courses?nodeId=9deed9cc-6221-43f8-b699-aaf0d0653569)
28 [aaf0d0653569](https://help.uber.com/partners/article/quality-improvement-courses?nodeId=9deed9cc-6221-43f8-b699-aaf0d0653569); “Understanding Ratings” [https://help.uber.com/](https://help.uber.com/partners/article/understanding-ratings?nodeId=fal1eb77f-ad79-4607-9651-72b932be30b7)
[partners/article/understanding-ratings?nodeId=fal1eb77f-ad79-4607-9651-](https://help.uber.com/partners/article/understanding-ratings?nodeId=fal1eb77f-ad79-4607-9651-72b932be30b7)
[72b932be30b7](https://help.uber.com/partners/article/understanding-ratings?nodeId=fal1eb77f-ad79-4607-9651-72b932be30b7) (accessed Oct. 31, 2019.)

¹¹ “About,” <https://www.uber.com/us/en/about/> accessed Oct. 31, 2019.)

1 connects driver-partners and riders is what makes it all
2 possible.¹²

3 35. For all relevant times, Plaintiffs and all other Class Members work
4 within UBER's usual course of business of the transportation of people by driving
5 UBER's customers from place to place.

6 36. **Plaintiffs Do Not Have an Independently Established Trade,**
7 **Occupation, or Business of Ride-Sharing.**

8 37. For all relevant times, Plaintiffs and all other Class Members do not
9 provide ride-share services "independently" of their relationship with UBER.

10 38. For all relevant times, Plaintiffs and all other Class Members report
11 their work done exclusively to UBER through the UBER phone application.

12 39. For all relevant times, Plaintiffs and all other Class Members
13 managed no people.

14 40. For all relevant times, Plaintiffs and Class Members are working for
15 UBER from the time they turn on the application to wait for a ride-share request up
16 until they turn off the application after the last drop off.

17 41. For all relevant times, Plaintiffs and Class Members' duties as ride-
18 share drivers did not qualify them as exempt for purposes of the overtime law.

19 42. For all relevant times, Plaintiffs and Class Members were entitled to
20 minimum wage for every hour they worked.

21 43. For all relevant times, Plaintiffs and Class Members worked about 40
22 hours per week, sometimes more, sometimes less.

23 44. For all relevant times, upon information and belief, Plaintiffs and Class
24 Members were not paid time and a half for any overtime they worked nor were they
25

26
27 ¹² "How Uber Works," [https://www.uber.com/us/en/about/how-does-uber-](https://www.uber.com/us/en/about/how-does-uber-work/)
28 [work/](https://www.uber.com/us/en/about/how-does-uber-work/) (accessed Oct. 31, 2019.)

1 paid after the paycheck was due and were underpaid for the hours worked to the
2 extent the pay did not meet the minimum wage requirements.

3 45. Under California law, all wages must be paid twice during each
4 calendar month as set forth in Labor Code § 204(a).

5 46. Under California law, all nonexempt employees are entitled to time
6 and a half for each hour worked in excess of 40 in a week and double time pay for
7 hours worked over 12 in a day or for every hour after the first eight on the seventh
8 day of work.

9 47. Under California law, all employees must be paid at least the minimum
10 wage for every hour worked.

11 48. Under California law, employees must be reimbursed for business
12 related expenses.

13 49. For all relevant times, Plaintiffs and Class Members were not
14 reimbursed for use of their cell phone in using the UBER application or for mileage
15 they put on their vehicle while carrying out their duties for UBER.

16 50. Under California law, all employers must provide wage statements
17 listing twelve specific items as set forth in Labor Code § 226, including the accurate
18 accounting of hours worked.

19 51. For all relevant times, Plaintiffs and Class Members were underpaid
20 for hours worked, even to the extent that UBER was not paying the minimum
21 wage.

22 52. For all relevant times, Plaintiffs and Class Members were not paid
23 time and a half for all the overtime hours they worked on those periods they
24 received wages late.

25 53. For all relevant times, when Plaintiffs and Class Members were fired,
26 UBER failed to provide unpaid wages or commissions in their last paycheck.

27 54. To date, UBER has not paid Plaintiffs and Class Members all their
28 wages due and payable to them, in an amount to be proven at trial.

SPECIFIC ALLEGATIONS CONCERNING LABOR CODE VIOLATIONS

55. Since March 1, 2019, Plaintiffs Mark Glinoga (hereinafter “GLINOGA”), Alexis Gonzales (hereinafter “GONZALES”), and Kevin Neely (“hereinafter “NEELY”) (Collectively referred to as “Plaintiffs”), ~~have been~~ began working as UBER drivers by use of the UBER application, use of their own car, and with the use of their own money for maintenance of the vehicle and phone used to carry out their duties for UBER.

56. Specifically, GLINOGA, GONZALEZ and NEELY have used Defendant UBER’s application since March 1, 2019 to provide the transportation service to UBER customers by turning on UBER’s driver app and set the settings so that they can see and accept UBER customer requests for a ride through the UBER application.

57. In this manner, since March 1, 2019, GLINOGA, GONZALEZ and NEELY have had the application set to “on,” waiting for an UBER customer request for long periods of time; often times spending more time waiting for a ride request than driving a customer resulting in the compensation for said ride or rides over the course of a week to come out to less than minimum wage per hour.

58. Also, since March 1, 2019, GLINOGA, GONZALEZ and NEELY regularly had the UBER application on, waiting for and providing for UBER customers for over 8 hours a day, after having done this function 40 hours in a week. In the instances where GLINOGA, GONZALEZ and NEELY earned enough to meet minimum wage for 40 hours of work in a week, they were not paid time and half for hours worked in excess of 40 hours in a week (i.e., over time pay of time and half).

59. Since March 1, 2019, in waiting for and providing rides for UBER customers while using UBER’s application (as they cannot solicit UBER customers without UBER’s permission under the terms and conditions imposed by UBER without this application) GLINOGA, GONZALEZ and NEELY used their own

1 phone, paid for the cell phone service necessary to access UBER's application,
 2 drove their own car to carry out their duties as a UBER ride share driver in waiting
 3 for, picking up and driving UBER customers to their requested locations, and paid
 4 for gas and maintenance of their respective cars used in carrying out their duties and
 5 obligations for UBER. Since March 1, 2019, the foregoing activities' costs in
 6 carrying out their ride-share/transportation function on UBER's behalf were borne
 7 respectively by GLINOCA, GONZALEZ and NEELY, none of which has been
 8 reimbursed by UBER to date.

9 **CLASS ACTION ALLEGATIONS**

10 60. Plaintiffs bring this action on behalf of themselves and all others
 11 similarly situated as a Class Action pursuant to FRCP Rule 23. Plaintiffs seek to
 12 represent a class composed of and defined as follows: "All persons who worked as
 13 ride-share drivers for UBER (hereinafter referred to as "Ride-share drivers"), from
 14 March 1, 2019 to the present, who opted out of both the 2015 and 2019 arbitration
 15 provisions.

16 61. Excluded from the class and class claims is any UBER employee or
 17 worker that did not work as a ride-share driver, as well as those that did not opt out
 18 of either the 2015 or 2019 arbitration agreements. Excluded from the class include
 19 all named plaintiffs herein (Non-Representative Plaintiffs) but not Plaintiffs
 20 GLINOCA, GONZALEZ and NEELY.

21 62. This action has been brought and may properly be maintained as a
 22 Class Action under FRCP 23 because there is a well-defined community of interest
 23 in the litigation and the proposed Class is easily ascertainable.

24 **A. Numerosity**

25 63. The potential members of the Class as defined are so numerous or
 26 many that joinder of all the members of the Class is impracticable. While the
 27 precise number of Class Members has not been determined at this time, Plaintiffs
 28 are informed and believe, and on that basis allege, that UBER currently employs,

1 and during the relevant time periods employed, over 50,000 Ride-share drivers.

2 **B. Commonality**

3 64. There are questions of law and fact common to the Class that
 4 predominate over any questions affecting only individual Class Members. These
 5 common questions of law and fact include, without limitation and subject to
 6 possible further amendment:

- 7 (a) Whether UBER intentionally misclassified the Class as
 8 independent contractors after April 2018, in violation of
 9 Labor Code § 226.8 and *Dynamex*;
- 10 (b) Whether Defendants' policy or practice of not paying
 11 Plaintiffs overtime compensation for the hours they
 12 worked over 40 in a workweek or eight hours in a day is
 13 illegal under Labor Code §§ 510, 1194, and Wage Order
 14 No. 4-2001 § 3(A);
- 15 (c) Whether Defendants' policy or practice of not paying ride-
 16 share drivers all their wages due in their final paychecks
 17 immediately upon involuntary termination or when 72
 18 hours' notice was provided before voluntary resignation,
 19 is unlawful under Labor Code §§ 201, 202 and/or 203;
- 20 (d) Whether Defendants' policy or practice of not paying ride-
 21 share drivers of at least minimum wage is a violation of
 22 Labor Code §§ 1194 and 1197;
- 23 (e) Whether Plaintiffs and the members of the Class are
 24 entitled to equitable relief pursuant to Business &
 25 Professions Code §§ 17200, et seq;
- 26 (f) Whether Defendants violated Labor Code §§ 226 by not
 27 providing accurate pay stubs;
- 28 (g) Whether Defendants violated California law including but

not limited to California Industrial Welfare Commission (“IWC”) Wage Order Nos. 4-2001, 4-2000, and 4-1998 by not keeping accurate time records;

(h) Whether Plaintiffs and/or the Class Members are entitled to injunctive relief;

(i) The nature and extent of class-wide injury and the measure of damages, restitution penalties, or other monetary relief owed; and

(j) Whether Defendants violated the Unfair Business Practices Act (Bus. & Prof. § 17200) by violating the laws alleged to have been violated in this Complaint.

C. Typicality

65. Plaintiffs' and all other Class Members' claims are typical of the claims of the Class. Plaintiffs and all members of the Class sustained injuries and damages arising out of and caused by Defendants' common course of conduct and policies in violation of laws, regulations that have the force and effect of law and statutes as alleged herein. Plaintiffs' and all other Class Members' claims are thereby representative of and co-extensive with the claims of the class. Plaintiffs' and all other Class Members' claims are typical of the claims of the members of the Class because they were hourly-paid employees who, like the other members of the Class, sustained damages and losses arising out of the Defendants' unlawful conduct, which includes, but is not limited to, the following: repeatedly failing to pay – or indeed ever pay – hours reported worked; failing to provide accurate wage statements; failing to pay bi-monthly in a timely manner; failing to pay Plaintiffs and Class Members all wages due immediately upon involuntary termination; and failing to include all wages in said final paychecks.

D. Adequacy of Representation

66. Plaintiffs are members of the Class, do not have any conflicts of

1 interest with other Class Members, and will prosecute the case vigorously on behalf
 2 of the Class. Counsel representing Plaintiffs are competent and experienced in
 3 litigating large employment class actions, including wage and overtime class
 4 actions. Plaintiffs will fairly and adequately represent and protect the interests of
 5 the Class Members.

6 **E. Superiority of Class Action**

7 67. A class action is superior to other available means for the fair and
 8 efficient adjudication of this controversy; especially whether Class Members are
 9 misclassified as independent contractors under Labor Code § 2750.3's ABC
 10 test. Individual joinder of all Class Members is not practicable, and questions of
 11 law and fact common to the Class predominate over any questions affecting only
 12 individual members of the Class. Each Class Member has been damaged or
 13 suffered injury and is entitled to recovery by reason of Defendants' illegal policies
 14 and/or practices including but not limited to failing to pay – or indeed ever pay --
 15 overtime compensation to its employees; failing to pay minimum wage; failing to
 16 provide accurate wage statements; and failing to pay Plaintiffs and Class Members
 17 all wages due immediately upon involuntary termination, within 72 hours of
 18 voluntary resignation, paying said final wages at the place of employment, and
 19 including all wages in said final paychecks. Class Action treatment will allow those
 20 similarly situated persons to litigate their claims in the manner that is most efficient
 21 and economical for the parties and the judicial system.

22 68. Class Action treatment will allow those similarly situated persons to
 23 litigate their claims in the manner that is most efficient and economical for the
 24 parties and the judicial system. Plaintiffs are unaware of any difficulties that are
 25 likely to be encountered in the management of this action that would preclude
 26 maintenance as a Class Action.

27 69. Plaintiffs bring this action on behalf of themselves and on behalf of
 28 others similarly situated current employees and former employees, including but

not limited to all individuals “contracted,” but legally employed, as “Ride-share drivers,” pursuant to Code of Civil Procedure § 382 and as Class Claims. The Class of employees that Plaintiffs seek to represent includes all individuals employed as a “Ride-share drivers”:

- (a) Who were misclassified as independent contractors;
- (b) Who did not receive overtime compensation; and/or
- (c) Who did not receive minimum wages; and/or
- (d) Who did not receive payment of wages on a timely, bi-monthly manner; and/or
- (e) Who did not receive accurate wage statements; and/or
- (f) Who were not timely paid all wages owed upon involuntary termination, or within 72 hours of voluntary resignation, at the place of employment.

For the reasons alleged in this Complaint, this action should be certified as a Class Action.

FIRST CAUSE OF ACTION

(Individual and Representative Claim for

Failure to Pay Timely Earned Wages During Employment and

Upon Separation of Employment in Violation of

California Labor Code §§ 201, 202, 203, 204, 218.5, and 218.6)

(GLINOCA, GONZALEZ and NEELY Against All Defendants)

70. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

71. Pursuant to Labor Code § 201, “if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

72. Pursuant to Labor Code § 202, “if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall

1 become due and payable not later than 72 hours thereafter, unless the employee
2 has given 72 hours previous notice of his or her intention to quit, in which case the
3 employee is entitled to his or her wages at the time of quitting.”

4 73. Labor Code § 203 provides, in pertinent part: “If an employer willfully
5 fails to pay, without abatement or reduction, ... any wages of an employee who is
6 discharged or who quits, the wages of the employee shall continue as a penalty
7 from the due date thereof at the same rate until paid or until an action therefore is
8 commenced; but the wages shall not continue for more than 30 days. ...”

9 74. Pursuant to Labor Code § 204, “all wages ... earned by any person in
10 any employment are due and payable twice during each calendar month, on days
11 designated in advance by the employer as the regular paydays.”

12 75. Pursuant to Labor Code §§ 218.5 and 218.6, an action may be brought
13 for the nonpayment of wages and fringe benefits.

14 76. Plaintiffs and Class Members were not properly paid pursuant to the
15 requirements of Labor Code §§ 201, 202, and 204 and thereby seek the unpaid
16 wages. To date, for example, Defendants have not paid Plaintiffs all earned wages.

17 77. Since March 1, 2019, Plaintiffs GLINOCA, GONZALES, NEELY,
18 have been began working as UBER drivers by use of the UBER application, use of
19 their own car, and with the use of their own money for maintenance of the vehicle
20 and phone used to carry out their duties for UBER.

21 78. Specifically, GLINOCA, GONZALEZ, and NEELY have used
22 Defendant UBER’s application since March 1, 2019 to provide the transportation
23 service to UBER customers by turning on UBER’s driver app and set the settings
24 so that they can see and accept UBER customer requests for a ride through the
25 UBER application.

26 79. In this manner, since March 1, 2019, GLINOCA, GONZALEZ, and
27 NEELY have had the application set to “on,” waiting for an UBER customer request
28 for long periods of time; often times spending more time waiting for a ride request

1 than driving a customer resulting in the compensation for said ride or rides over the
2 course of a week to come out to less than minimum wage per hour.

3 80. Also, since March 1, 2019, GLINOGA, GONZALEZ, and NEELY
4 regularly had the UBER application on, waiting for and providing for UBER
5 customers for over 8 hours a day, after having done this function 40 hours in a week.
6 In the instances where GLINOGA, GONZALEZ, and NEELY earned enough to
7 meet minimum wage for 40 hours of work in a week, they were not paid time and
8 half for hours worked in excess of 40 hours in a week (i.e., over time pay of time
9 and half).

10 ~~80-81.~~ Plaintiff GLINOGA, GONZALEZ, and NEELY stopped working for
11 UBER in approximately March of 2020. Accordingly, Plaintiffs employment
12 relationships with UBER ended in or about March of 2020.

13 ~~81-82.~~ Plaintiffs and Class Members are informed and believe and based
14 thereon allege that Defendants willfully failed to pay Plaintiffs' wages in the form
15 of minimum wage and overtime pay pursuant to the requirements of Labor Code
16 §§ 201, 202, and 204, after Plaintiffs' demand, and therefore Plaintiffs are entitled
17 the associated unpaid wages and waiting time penalties. Plaintiffs are informed and
18 believe and based thereon allege that Defendants did this with the intent to secure
19 for themselves a discount on their indebtedness and/or with intent to annoy harass,
20 oppress, hinder, delay and/or defraud Plaintiffs.

21 ~~82-83.~~ Plaintiffs and Class Members have been deprived of their rightfully
22 earned wages as a direct and proximate result of Defendants' failure and refusal to
23 pay said compensation and for the reasons alleged in this Complaint.

24 ~~83-84.~~ Plaintiffs and Class Members request the unpaid wages, waiting time
25 penalties, interest, attorneys' fees, costs, damages, and other remedies in an amount
26 to be proven at trial.

27 ~~84-85.~~ Non-Representative Plaintiffs will be enforcing any of their respective
28 individual rights and remedies for Defendant's violation of California Labor Code

1 §§ 201, 202, 203, 204, 218.5, and 218.6 through arbitration.

2 //

3 //

4 **SECOND CAUSE OF ACTION**

5 **(Individual and Representative Claim for**
6 **Failure to Pay Minimum Wages in Violation of**
7 **California Labor Code §§ 1182.12, 1194,**
8 **1194.2, 1197, and Wage Order No. 4-2001 § 3(A))**

9 **(GLINOCA, GONZALEZ and NEELY Against All Defendants)**

10 ~~85-86.~~ Plaintiffs re-allege and incorporate by reference the foregoing
11 allegations as though set forth herein.

12 ~~86-87.~~ Pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and 1197, it is
13 unlawful for a California employer to suffer or permit an employee to work without
14 paying wages for all hours worked, as required by the applicable Industrial Welfare
15 Commission (“IWC”) Wage Order.

16 ~~87-88.~~ During all times relevant, IWC Wage Order No. 4-2001, governing the
17 “Professional, Technical, Clerical, Mechanical and Similar Occupations” industry,
18 applied to Plaintiffs and the Class members’ employment with Defendants.

19 ~~88-89.~~ Pursuant to Wage Order 4, section 2(K), “hours worked” include the
20 time during which an employee is “suffered or permitted to work, whether or not
21 required to do so.”

22 ~~89-90.~~ IWC Wage Order No. 4-2001, § 4 (A), requires every employer to pay
23 each employee minimum wages not less than \$11.00 per hour effective January 1,
24 2018, \$12.00 per hour effective January 1, 2019, and \$13.00 per hour effective
25 January 1, 2019 to the present time.

26 ~~90-91.~~ During all times relevant, Class Members including Plaintiffs have not
27 been paid minimum wages for all hours suffered or permitted to work in violation
28 of the minimum wage provisions of California Labor Code §§ 1182.12, 1194,

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1 1194.2, and 1197, and IWC Wage Order No. 4-2001, § 4 (A).

2 ~~91-92.~~ Since March 1, 2019, Plaintiffs GLINOGA, GONZALES, and
 3 NEELY ~~have been~~ began working as UBER drivers by use of the UBER application,
 4 use of their own car, and with the use of their own money for maintenance of the
 5 vehicle and phone used to carry out their duties for UBER.

6 ~~92-93.~~ Specifically, GLINOGA, GONZALEZ, and NEELY have used
 7 Defendant UBER's application since March 1, 2019 to provide the transportation
 8 service to UBER customers by turning on UBER's driver app and set the settings
 9 so that they can see and accept UBER customer requests for a ride through the
 10 UBER application.

11 94. In this manner, since March 1, 2019, GLINOGA, GONZALEZ, and
 12 NEELY have had the application set to "on," waiting for an UBER customer request
 13 for long periods of time; often times spending more time waiting for a ride request
 14 than driving a customer resulting in the compensation for said ride or rides over the
 15 course of a week to come out to less than minimum wage per hour.

16 *Failure to Compensate for Time Waiting for Ride Notifications on*
 17 *Uber's App Has Led to Failure to Account for Hours Worked Which Led to a*
 18 *Failure to Pay Minimum Wage*

19 95. Specifically, Plaintiffs GLINOGA, GONZALES, and NEELY have
 20 been driving for Defendants prior to March 1, 2019 continuing up to and until
 21 approximately March of 2020. During the entirety of his employment, Plaintiff
 22 GLINOGA worked approximately 60 hours per week on average but was only paid
 23 by Defendants for approximately 30 of those hours on average. During the entirety
 24 of his employment, Plaintiff GONZALES worked approximately 50 to 60 hours per
 25 week but was only paid by Defendants for approximately 40 to 42 of those hours
 26 on average. During the entirety of his employment, Plaintiff NEELY worked
 27 approximately 55 hours per week but was only paid by Defendants for
 28 approximately 25 of those hours on average. As such, Plaintiffs GLINOGA,

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1 GONZALES, and NEELY were not earning minimum wage. Defendants engaged
 2 in this practice throughout the three-year statute of limitations that applies to this
 3 action pursuant to 29 U.S.C. § 255.

4 96. Specifically, Plaintiff GLINOGA worked approximately seven days a
 5 week while employed by UBER. From Monday through Thursday, Plaintiff
 6 GLINOGA regularly worked from 5:00 p.m. to 12:00 a.m., for a total of
 7 approximately seven hours a day. If Plaintiff GLINOGA did not have to report to
 8 his day job, he would work on Mondays through Thursdays from approximately
 9 6:00 a.m. to 12:00 p.m., then again from 2:00 pm to 12:00 am, for a total of sixteen
 10 hours, with a two-hour break in between. On Fridays, Plaintiff GLINOGA regularly
 11 worked from approximately 5:00 p.m. to 2:00 a.m., for a total of approximately nine
 12 hours. On Saturdays and Sundays, Plaintiff regularly worked from approximately
 13 10:00 a.m. to 4:00 p.m., then again from 5:00 p.m. to 2:00 a.m., for a total of 15
 14 hours, with a one-hour break in between. During these times, Plaintiff GLINOGA
 15 had his UBER application set to “on” while he was either transporting passengers,
 16 or waiting for his next customer to request a ride. Plaintiff GLINOGA turned his
 17 Uber application “on” at the start of his day, and left the app on the entire time, with
 18 the exception of his one or two-hour breaks. During the entirety of his employment
 19 with UBER, Plaintiff GLINOGA earned approximately \$700.00 per week, for
 20 working a total of approximately 67 hours a week on average. Accordingly,
 21 Plaintiff GLINOGA was earning approximately \$10.44 per hour while employed
 22 by UBER. Often times, a third or more of Plaintiff GLINOGA’s earnings were used
 23 to pay for gas for his vehicle.

24 97. Moreover, Plaintiff NEELY consistently worked six days a week while
 25 employed by UBER. From Monday through Friday, Plaintiff NEELY regularly left
 26 his house, got in his car, and turned the UBER application “on” at approximately
 27 7:00 a.m. Plaintiff NEELY left the application “on” all day, while he was either
 28 transporting passengers, or waiting for his next customer to request a ride. From

Monday through Friday, Plaintiff NEELY regularly turned the UBER application off for approximately one hour around 11:30 a.m. or 12:00 p.m. noon, in order to eat something and rest. On Mondays through Fridays, at approximately 5:00 to 6:00 p.m., Plaintiff NEELY would set his Uber application to a “destination” filter, which allowed the application to find him rides that were heading towards his home. Plaintiff NEELY generally turned his UBER application off and got home at approximately 6:30 p.m. on Monday through Friday, after working approximately ten hours total per day. On Saturdays, Plaintiff NEELY worked approximately five to six hours total, either in the morning or in the afternoon, with his UBER application set to “on” the entire time, with no breaks in between. Plaintiff NEELY did not work on Sundays. During the entirety of his employment with UBER, Plaintiff NEELY earned approximately \$85.00 to \$120.00 per day, while working at least ten hours a day. Accordingly, Plaintiff NEELY was earning approximately \$8.50 per hour (less than minimum wage) while employed by UBER.

98. Moreover, Plaintiff GONZALES worked 7 days a week while employed by UBER. From Monday through Thursday, Plaintiff GONZALES regularly left his house, got in his car, and turned the UBER application “on” at approximately 5:00 a.m. to 10:00 a.m. On Friday through Sunday, Plaintiff GONZALES left the application “on” from 3:00 pm to 3:00pm, with rare breaks during slower times. Plaintiff GONZALES typically worked 40-50 hours a week, and about 15 times a year would work 50-60 a week. During the entirety of his employment with UBER, Plaintiff NEELY earned approximately \$85.00 to \$120.00 per day, while working at least ten hours a day. Accordingly, Plaintiff NEELY was earning approximately \$8.50 (less than minimum wage) per hour while employed by UBER.

Specific Workweeks of Plaintiff GONZALEZ:

- July 15 to 22, 2019 he totaled 54h 24m “online” / 38h 53m “active”
- Oct 21 to 28, 2019 he totaled 44h 10m “online” / 37h 13m “active”

• Dec 2 to 9, 2019 he totaled 50h 7m “online” / 35h 42m “active”

• Jan 20 to 27, 2020 he totaled 66h 4m “online” / 39h 15m “active”

99. These differential demonstrate how Plaintiff GONZALEZ waiting hours in a work week for which they were not compensated as “waiting time,” thus leading to a failure to be paid minimum wage, as well as failure to pay at an overtime rate for applicable hours worked over 40 in a work week

100. The times in which Plaintiffs had their application set to “on,” Plaintiffs were either waiting for a ride request, driving to or from a customer pick up or drop off location, or driving a customer. These hours worked are compensable since Plaintiffs were suffered or permitted to work during these times, whether or not required to do so. Plaintiffs were suffered or permitted to work up to twelve (12) hours a day. Once a driver reached twelve (12) hours, the UBER application would not allow them to continue working additional hours for at least the next eight (8) consecutive hours.

101. Specifically, Plaintiff GLINOCA worked approximately seven days a week while employed by UBER. From Monday through Thursday, Plaintiff GLINOCA regularly worked from 5:00 p.m. to 12:00 a.m., for a total of approximately seven hours a day. If Plaintiff GLINOCA did not have to report to his day job, he would work on Mondays through Thursdays from approximately 6:00 a.m. to 12:00 p.m., then again from 2:00 pm to 12:00 am, for a total of sixteen hours, with a two-hour break in between. On Fridays, Plaintiff GLINOCA regularly worked from approximately 5:00 p.m. to 2:00 a.m., for a total of approximately nine hours. On Saturdays and Sundays, Plaintiff regularly worked from approximately 10:00 a.m. to 4:00 p.m., then again from 5:00 p.m. to 2:00 a.m., for a total of 15 hours, with a one-hour break in between. During these times, Plaintiff GLINOCA had his UBER application set to “on” while he was either transporting passengers, or waiting for his next customer to request a ride. Plaintiff GLINOCA turned his Uber application “on” at the start of his day, and left the app

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on the entire time, with the exception of his one or two-hour breaks. During the entirety of his employment with UBER, Plaintiff GLINOGA earned approximately \$700.00 per week, for working a total of approximately 67 hours a week on average. Accordingly, Plaintiff GLINOGA was earning approximately \$10.44 per hour while employed by UBER. Often times, a third or more of Plaintiff GLINOGA's earnings were used to pay for gas for his vehicle.

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—Moreover, Plaintiff NEELY consistently worked six days a week while employed by UBER. From Monday through Friday, Plaintiff NEELY regularly left his house, got in his car, and turned the UBER application “on” at approximately 7:00 a.m. Plaintiff NEELY left the application “on” all day, while he was either transporting passengers, or waiting for his next customer to request a ride. From Monday through Friday, Plaintiff NEELY regularly turned the UBER application off for approximately one hour around 11:30 a.m. or 12:00 p.m. noon, in order to eat something and rest. On Mondays through Fridays, at approximately 5:00 to 6:00 p.m., Plaintiff NEELY would set his Uber application to a “destination” filter, which allowed the application to find him rides that were heading towards his home. Plaintiff NEELY generally turned his UBER application off and got home at approximately 6:30 p.m. on Monday through Friday, after working approximately ten hours total per day. On Saturdays, Plaintiff NEELY worked approximately five to six hours total, either in the morning or in the afternoon, with his UBER application set to “on” the entire time, with no breaks in between. Plaintiff NEELY did not work on Sundays. During the entirety of his employment with UBER, Plaintiff NEELY earned approximately \$85.00 to \$120.00 per day, while working at least ten hours a day. Accordingly, Plaintiff NEELY was earning approximately \$8.50 to \$12.00 per hour while employed by UBER.

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102.

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4.103. Labor Code § 1194.2, subdivision (a) provides that, in an action to

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1 recover wages because of the payment of a wage less than the minimum wage fixed
2 by IWC Wage Orders, an employee is entitled to recover liquidated damages in an
3 amount equal to the wages unlawfully unpaid and interest thereon.

4 ~~2-104.~~ Class Members, including Plaintiffs, should have received minimum
5 wages in a sum according to proof during all times relevant to this action.

6 ~~3-105.~~ Defendants have intentionally failed and refused, and continue to fail
7 and refuse, to pay Class Members, including Plaintiffs, minimum wages for all
8 time suffered or permitted to work.

9 ~~4-106.~~ Plaintiffs, on behalf of themselves and the Class, request the recovery
10 of the unpaid minimum wages, waiting time penalties, liquidated damages, interest,
11 attorneys' fees, and costs in an amount to be determined at trial.

12 ~~93.~~ Non-Representative Plaintiffs will be enforcing any of their respective
13 individual rights and remedies for Defendant's violation of California Labor Code
14 §§ 1182.12, 1194, 1194.2, 1197, and Wage Order No. 4-2001 § 3(A) through
15 arbitration.

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16 ~~THIRD CAUSE OF ACTION~~
17 ~~(Individual and Representative Claim for~~
18 ~~Failure to Maintain Required Records in Violation of~~
19 ~~California Labor Code § 1174.5 and Wage Order No. 4, § 7)~~
20 ~~(GLINOCA, GONZALEZ and NEELY Against All Defendants)~~

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21 ~~94.~~ Plaintiffs re-allege and incorporate by reference the foregoing
22 allegations as though set forth herein.

23 ~~95.~~ At all times relevant herein, IWC Wage Order No. 4, § 7 requires every
24 employer to maintain time records showing when the employee begins and ends
25 each shift and payroll records

26 ~~96.~~ Plaintiffs are informed and believe and based thereon allege that during
27 all times relevant to the Class Period, Defendants failed to comply with § 7 of IWC
28 Order 4-2001 and with Labor Code § 1174 by failing to maintain certain records

1 which employers are required to maintain, including but not limited to, records of
 2 hours worked, meal periods provided to each employee, and overtime worked, and
 3 wages paid.

4 97. Since March 1, 2019, Plaintiffs GLINOGA, GONZALES, and
 5 NEELY have been began working as UBER drivers by use of the UBER
 6 application, use of their own car, and with the use of their own money for
 7 maintenance of the vehicle and phone used to carry out their duties for UBER.

8 98. Specifically, GLINOGA, GONZALEZ, and NEELY have used
 9 Defendant UBER's application since March 1, 2019 to provide the transportation
 10 service to UBER customers by turning on UBER's driver app and set the settings
 11 so that they can see and accept UBER customer requests for a ride through the
 12 UBER application.

13 99. In this manner, since March 1, 2019, GLINOGA, GONZALEZ, and
 14 NEELY have had the application set to "on," waiting for an UBER customer
 15 request for long periods of time; often times spending more time waiting for a ride
 16 request than driving a customer resulting in the compensation for said ride or rides
 17 over the course of a week to come out to less than minimum wage per hour.

18 100. Also, since March 1, 2019, GLINOGA, GONZALEZ, and NEELY
 19 regularly had the UBER application on, waiting for and providing for UBER
 20 customers for over 8 hours a day, after having done this function 40 hours in a
 21 week. In the instances where GLINOGA, GONZALEZ and NEELY earned
 22 enough to meet minimum wage for 40 hours of work in a week, they were not paid
 23 time and half for hours worked in excess of 40 hours in a week (i.e., over time pay
 24 of time and half).

25 101. For the reasons alleged in this Complaint, Plaintiffs seek any and all
 26 available remedies in an amount to be proven at trial including but not limited to
 27 damages, attorneys' fees and costs, and interest.

28 ——— Non Representative Plaintiffs will be enforcing any of their respective

individual rights and remedies for Defendant's violation of California Labor Code § 1174.5 and Wage Order No. 4, § 7 through arbitration.

~~402.107.~~

FOURTH-THIRD CAUSE OF ACTION

(Individual and Representative Claim for

Penalties for Violations of California Labor Code § 226 for

Failure to Provide Accurate Wage Statements)

(GLINOVA, GONZALEZ, and NEELY Against All Defendants)

~~5.108.~~ Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

~~6.109.~~ Plaintiffs allege that Labor Code § 226 subdivision (a) requires, in pertinent part, that "Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing: (1) gross wages earned; (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of § 515 or any applicable order of the Industrial Welfare Commission; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement; (8) the name and address of the legal entity that is the

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1 employer; and (9) all applicable hourly rates in effect during the pay period and the
 2 corresponding number of hours worked at each hourly rate by the employee. . .”
 3 (Labor Code § 226 subdivision (a)).

4 ~~7-110.~~ Upon information and belief, during all times relevant to this action,
 5 debt collectors, including Plaintiffs, never received any wage statement at all, let
 6 alone a wage statement with all required information set forth under Labor Code §
 7 226 from Defendants, and Plaintiffs suffered damages from not receiving wage
 8 statements.

9 ~~8-111.~~ Plaintiffs allege that, on numerous occasions, an exact amount by
 10 which will be proven at trial, Defendants violated various provisions of § 226,
 11 including but not limited to subdivisions (a)(1), (a)(2), (a)(4), (a)(5), (a)(6), (a)(7),
 12 (a)(8), and (a)(9) by failing to provide Plaintiffs accurate itemized statement in
 13 writing showing: (1) gross wages earned; (2) total hours worked by the employee;
 14 (3) all deductions; (4) net wages earned; (5) the inclusive dates of the period for
 15 which the employee is paid; (6) the name of the employee; (7) the name and address
 16 of the legal entity that is the employer; and (8) all applicable hourly rates in effect
 17 during the pay period and the corresponding number of hours worked at each
 18 hourly rate by the employee.

19 ~~112.~~ Specifically, Plaintiffs GLINOGA, GONZALES, and NEELY have
 20 been driving for Defendants prior to March 1, 2019 continuing up to and until
 21 approximately March of 2020. Plaintiffs employment with UBER ended in or
 22 about March of 2020. To date, Plaintiffs GLINOGA, GONZALES, and NEELY
 23 have not once received any wage statement whatsoever, let alone a wage statement
 24 with all required information set forth under Labor Code § 226.

25 ~~9-113.~~ Ubers failure to provide wage statements consistent with Labor Code
 26 § 226's requirements was willful and intentional after it became on notice in April
 27 2018 when the ABC test first was establish through Dynamex. At the very least,
 28 Uber was on notice that Plaintiffs and Class Members were employees under Labor

Code § 2750.3 (a.k.a., “AB5”) in September 2019 through the enactment of Prop 22. After an employer has learned its conduct violates the Labor Code, the employer is on notice that any future violations will be punished just the same as violations that are willful or intentional, i.e., they will be punished at twice the rate of penalties that could have been imposed or that were imposed for the initial violation. (*Patel v. Nike Retail Services, Inc.* (N.D.Cal.2014) 58 F.Supp.3d 1032.)

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~~10-114.~~ For Defendants’ misconduct as alleged in this Complaint, Plaintiffs seek damages, penalties, costs and attorneys’ fees pursuant to Labor Code § 226 subdivision (e) in an amount to be proven at trial.

~~11-115.~~ For Defendants’ misconduct as alleged herein, Plaintiffs seek injunctive relief and attorneys’ fees and costs pursuant to § 226 subdivision (g) in an amount to be proven at trial.

~~12-116.~~ Non-Representative Plaintiffs will be enforcing any of their respective individual rights and remedies for Defendant’s violation of California Labor Code § 226 through arbitration.

FIFTH-FOURTH CAUSE OF ACTION

(Individual and Representative Claim

Failure to Pay Required Minimum Wages in Violation of

Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 206)

(GLINOCA, GONZALEZ, and NEELY Against All Defendants)

~~13-117.~~ Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

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118. At all times relevant, Defendants have willfully and intentionally failed to pay Plaintiffs and Class Members minimum wage as required by 29 U.S.C. § 206.

Standby/On-Call Time Is Compensable Under Federal and State

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119. California's Wage Order No. 4 of the Industrial Welfare Commission defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." (IWC Wage Order No. 4-2001, sec. 2, subsec. (k).) Under California law, on-call waiting time is compensable if it is spent primarily for the benefit of the employer and its business. (*Gomez v. Lincare, Inc.* (2009) 173 Cal. App. 4th 508, 522 (adopting test set forth in *Owens v. Local No. 169, Ass'n of Western Pulp & Paper Workers* (9th Cir. 1992) 971 F.2d 347); *Armour & Co. v. Wantock* (1944) 323 U.S. 126, 132; *Skidmore v. Swift & Co.* (1944) 323 U.S. 134.) "Whether time is spent predominantly for the employer's benefit or for the employee's is a question dependent upon all the circumstances of the case." (*Armour* at 133.). The relevant factual inquiry is whether an employee is "engaged to wait" or waiting to be engaged. (*Skidmore*, at 133.)

120. There can be no dispute that for Plaintiffs and Class Members to provide the service of an Uber ride for an Uber customer, they must use Uber's application to be connected with that Uber customer. In other words, a driver is ignorant of an Uber customer's need for a ride without use of Uber's application. Ergo, Plaintiff and Class members are controlled by Uber (the employer), through Uber's application, because Uber permits (at its discretion and without any transparency) how and when the Plaintiffs and Class Members are notified of an Uber customer's solicitation of a ride through Uber's digital platform.

121. Without use of Uber's application for notification of an Uber customer's request for a ride, and waiting for Uber to notify Plaintiff and Class Members of a customer's request for a ride, Plaintiff and Class Members cannot connect with a customer which in turn prevents the customer and the driver from ever connecting. In fact, Uber incentivizes Plaintiffs and Class Members to wait for a rider notification with surge pricing during events that Uber anticipates will lead to high demand for Uber rides; e.g., high density of bars, nightclubs, concerts,

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sporting events etc.

122. Waiting on Uber's application for a ride notification is the *only* method Plaintiff and Class Members can ever learn an opportunity to provide a ride to an Uber customer. The Uber ride, where driver and customer meet, cannot be effectuated without their participation in Uber's exclusive digital platform a.k.a., the Uber app. Under this practical and indisputable reality, Plaintiff and Class Members are "engaged to wait" on Uber's application for Uber to notify them of a customer's ride request, in order to provide the Uber customer the benefit of the service provided by Uber – a car ride, at a predetermined estimated price, with an estimated time of pickup, and estimated time of arrival, that can be paid by anyone, that can be shared with anyone, and all made possible through (exclusive) use of Uber's app.

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123. Moreover, Plaintiffs' and Class Members' time spent waiting on the application for a rider notification is for the benefit of Uber, as Uber charges the customer for rides Plaintiffs and Class Members are waiting on the Uber app to be notified of.

124. Because this waiting time (a.k.a., standby time) on Uber's application is inextricably intertwined Plaintiffs'/Class Members' ability to provide a ride (or customers to solicit a ride) that benefits and is controlled by Uber, the time waiting on the app is for the benefit of Uber, and should be compensated as "hours worked" under California and federal law.

Failure to Compensate for Time Waiting for Ride Notifications on
Uber's App Has Led to Failure to Account for Hours Worked Which
Led to a Failure to Pay Minimum Wage

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125. Specifically, Plaintiffs GLINOCA, GONZALES, and NEELY have been driving for Defendants prior to March 1, 2019 continuing up to and until approximately March of 2020. During the entirety of his employment, Plaintiff GLINOCA worked approximately 60 hours per week on average but was only paid

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1 by Defendants for approximately 30 of those hours on average. During the entirety
 2 of his employment, Plaintiff GONZALES worked approximately 50 to 60 hours
 3 per week but was only paid by Defendants for approximately 40 to 42 of those
 4 hours on average. During the entirety of his employment, Plaintiff NEELY worked
 5 approximately ~~45~~55 hours per week but was only paid by Defendants for
 6 approximately 25 of those hours on average. As such, Plaintiffs GLINOGA,
 7 GONZALES, and NEELY were not earning minimum wage. Defendants engaged
 8 in this practice throughout the three-year statute of limitations that applies to this
 9 action pursuant to 29 U.S.C. § 255.

10 126. Specifically, Plaintiff GLINOGA worked approximately seven days a
 11 week while employed by UBER. From Monday through Thursday, Plaintiff
 12 GLINOGA regularly worked from 5:00 p.m. to 12:00 a.m., for a total of
 13 approximately seven hours a day. If Plaintiff GLINOGA did not have to report to
 14 his day job, he would work on Mondays through Thursdays from approximately
 15 6:00 a.m. to 12:00 p.m., then again from 2:00 pm to 12:00 am, for a total of sixteen
 16 hours, with a two-hour break in between. On Fridays, Plaintiff GLINOGA
 17 regularly worked from approximately 5:00 p.m. to 2:00 a.m., for a total of
 18 approximately nine hours. On Saturdays and Sundays, Plaintiff regularly worked
 19 from approximately 10:00 a.m. to 4:00 p.m., then again from 5:00 p.m. to 2:00
 20 a.m., for a total of 15 hours, with a one-hour break in between. During these times,
 21 Plaintiff GLINOGA had his UBER application set to “on” while he was either
 22 transporting passengers, or waiting for his next customer to request a ride. Plaintiff
 23 GLINOGA turned his Uber application “on” at the start of his day, and left the app
 24 on the entire time, with the exception of his one or two-hour breaks. During the
 25 entirety of his employment with UBER, Plaintiff GLINOGA earned approximately
 26 \$700.00 per week, for working a total of approximately 67 hours a week on
 27 average. Accordingly, Plaintiff GLINOGA was earning approximately \$10.44 per
 28

1 hour while employed by UBER. Often times, a third or more of Plaintiff
 2 GLINOGA's earnings were used to pay for gas for his vehicle.

3 127. Moreover, Plaintiff NEELY consistently worked six days a week while
 4 employed by UBER. From Monday through Friday, Plaintiff NEELY regularly
 5 left his house, got in his car, and turned the UBER application "on" at
 6 approximately 7:00 a.m. Plaintiff NEELY left the application "on" all day, while
 7 he was either transporting passengers, or waiting for his next customer to request
 8 a ride. From Monday through Friday, Plaintiff NEELY regularly turned the UBER
 9 application off for approximately one hour around 11:30 a.m. or 12:00 p.m. noon,
 10 in order to eat something and rest. On Mondays through Fridays, at approximately
 11 5:00 to 6:00 p.m., Plaintiff NEELY would set his Uber application to a
 12 "destination" filter, which allowed the application to find him rides that were
 13 heading towards his home. Plaintiff NEELY generally turned his UBER
 14 application off and got home at approximately 6:30 p.m. on Monday through
 15 Friday, after working approximately ten hours total per day. On Saturdays,
 16 Plaintiff NEELY worked approximately five to six hours total, either in the
 17 morning or in the afternoon, with his UBER application set to "on" the entire time,
 18 with no breaks in between. Plaintiff NEELY did not work on Sundays. During the
 19 entirety of his employment with UBER, Plaintiff NEELY earned approximately
 20 \$85.00 to \$120.00 per day, while working at least ten hours a day. Accordingly,
 21 Plaintiff NEELY was earning approximately \$8.50 per hour (less than minimum
 22 wage) to \$12.00 per hour while employed by UBER.R.

23 128. Moreover, Plaintiff GONZALES worked 7 days a week while
 24 employed by UBER. From Monday through Thursday, Plaintiff GONZALES
 25 regularly left his house, got in his car, and turned the UBER application "on" at
 26 approximately 5:00 a.m. to 10:00 a.m. On Friday through Sunday, Plaintiff
 27 GONZALES left the application "on" from 3:00 pm to 3:00pm, with rare breaks
 28 during slower times. Plaintiff GONZALES typically worked 40-50 hours a week,

1 and about 15 times a year would work 50-60 a week. During the entirety of his
 2 employment with UBER, Plaintiff NEELY earned approximately \$85.00 to
 3 \$120.00 per day, while working at least ten hours a day. Accordingly, Plaintiff
 4 NEELY was earning approximately \$8.50 (less than minimum wage) per hour
 5 while employed by UBER.

6 129. Specific Workweeks of Plaintiff GONZALEZ:

7 130. • July 15 to 22, 2019 he totaled 54h 24m “online” / 38h 53m “active”

8 131. • Oct 21 to 28, 2019 he totaled 44h 10m “online” / 37h 13m “active”

9 132. • Dec 2 to 9, 2019 he totaled 50h 7m “online” / 35h 42m “active”

10 133. • Jan 20 to 27, 2020 he totaled 66h 4m “online” / 39h 15m “active”

11 14.—

12 134. These differential demonstrate how Plaintiff GONZALEZ waiting
 13 hours in a work week for which they were not compensated as “waiting time,” thus
 14 leading to a failure to be paid minimum wage, as well as failure to pay at an
 15 overtime rate for applicable hours worked over 40 in a work week.

16 ~~45.135.~~ Therefore, at all times relevant, Defendants operated under and
 17 continue to operate under a common policy and plan of willfully, regularly, and
 18 repeatedly failing and refusing to pay minimum compensation at the rates required
 19 by the California Law, currently \$12.00 per hour.

20 ~~46.136.~~ As alleged herein, Defendants do not pay Plaintiffs and Class
 21 Members a regular wage. As a result, Defendants have failed to comply with 29
 22 U.S.C. § 206 in that they have failed to timely pay at least minimum wages for all
 23 hours worked to the Plaintiffs and Class Members.

24 ~~47.137.~~ As a result of the unlawful acts of Defendants, Plaintiffs and
 25 Class Members and all FLSA Plaintiffs who opt-in are entitled to recovery in the
 26 amounts of their respective unpaid minimum wages, liquidated damages,
 27 prejudgment interest, attorneys’ fees and costs, and any other relief the Court
 28 deems just and proper pursuant to FLSA, 29 U.S.C. § 216(b).

1 ~~18.138.~~ Non-Representative Plaintiffs will be enforcing any of their
 2 respective individual rights and remedies for Defendant's failure to pay minimum
 3 wage under the Fair Labor Standards Act through arbitration.

4 ~~#~~

5 ~~#~~

6 ~~#~~

7 **SIXTHFIFTH CAUSE OF ACTION**

8 **(Individual and Representative Claim Failure to Pay Required Overtime**
 9 **Wages in Violation of FLSA, 29 U.S.C. § 207; 29 CFR §778.106)**
 10 **(GLINOVA, GONZALEZ, and NEELY Against All Defendants)**

11 ~~19.139.~~ Plaintiffs re-allege and incorporate by reference the foregoing
 12 allegations as though set forth herein.

13 ~~20.140.~~ At all times relevant, Defendants employed and continue to
 14 employ "employee[s]" within the meaning of FLSA, 29 U.S.C. § 203.

15 ~~21.141.~~ However, Defendants have willfully and intentionally engaged
 16 in a widespread pattern and practice of violating the provisions of the FLSA by
 17 failing to pay Plaintiffs and Class Members overtime wages as required by 29
 18 U.S.C. § 207.

19 ~~22.142.~~ Defendants engaged in this practice throughout the three-year
 20 statute of limitations that applies to this action pursuant to 29 U.S.C. § 255.

21 ~~23.143.~~ Therefore, at all times relevant, Defendants operated under and
 22 continue to operate under a common policy and plan of willfully, regularly, and
 23 repeatedly failing and refusing to pay Plaintiffs and Class Members overtime
 24 compensation at the rates required by the FLSA, 29 U.S.C. § 207 for work
 25 performed in excess of forty (40) hours per workweek to which they were and are
 26 entitled.

27 ~~24.144.~~ Pursuant to 29 CFR § 778.106, Defendants are required to pay
 28 overtime compensation earned in a workweek on the regular pay day for the period

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1 in which such workweek ends. When the correct overtime compensation cannot be
 2 calculated until after the regular payday, then the FLSA requires that the overtime
 3 payment be made as soon after the regular payday as is practicable, but no later than
 4 the next pay day after the computation can be made.

5 145. As alleged herein, Defendants do not pay Plaintiffs and Class Members
 6 overtime. As a result, Defendants have failed to comply with California Labor Code
 7 § 510 in that they fail to timely pay overtime wages to Plaintiffs and Class Members.

8 *Failure to Compensate for Time Waiting for Ride Notifications*
 9 *on Uber's App Has Led to a Failure to Account for Hours Worked, Leading to a*
 10 *Failure to Pay Overtime*

11 146. Specifically, Plaintiffs GLINOCA, GONZALES, and NEELY have
 12 been driving for Defendants prior to March 1, 2019 continuing up to and until
 13 approximately March of 2020. During the entirety of his employment, Plaintiff
 14 GLINOCA worked approximately 60 hours per week on average but was only paid
 15 by Defendants for approximately 30 of those hours on average. During the entirety
 16 of his employment, Plaintiff GONZALES worked approximately 50 to 60 hours per
 17 week but was only paid by Defendants for approximately 40 to 42 of those hours
 18 on average. During the entirety of his employment, Plaintiff NEELY worked
 19 approximately 55 hours per week but was only paid by Defendants for
 20 approximately 25 of those hours on average. As such, Plaintiffs GLINOCA,
 21 GONZALES, and NEELY were not earning minimum wage. Defendants engaged
 22 in this practice throughout the three-year statute of limitations that applies to this
 23 action pursuant to 29 U.S.C. § 255.

24 147. Specifically, Plaintiff GLINOCA worked approximately seven days a
 25 week while employed by UBER. From Monday through Thursday, Plaintiff
 26 GLINOCA regularly worked from 5:00 p.m. to 12:00 a.m., for a total of
 27 approximately seven hours a day. If Plaintiff GLINOCA did not have to report to
 28 his day job, he would work on Mondays through Thursdays from approximately

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1 6:00 a.m. to 12:00 p.m., then again from 2:00 pm to 12:00 am, for a total of sixteen
 2 hours, with a two-hour break in between. On Fridays, Plaintiff GLINOGA regularly
 3 worked from approximately 5:00 p.m. to 2:00 a.m., for a total of approximately nine
 4 hours. On Saturdays and Sundays, Plaintiff regularly worked from approximately
 5 10:00 a.m. to 4:00 p.m., then again from 5:00 p.m. to 2:00 a.m., for a total of 15
 6 hours, with a one-hour break in between. During these times, Plaintiff GLINOGA
 7 had his UBER application set to “on” while he was either transporting passengers,
 8 or waiting for his next customer to request a ride. Plaintiff GLINOGA turned his
 9 Uber application “on” at the start of his day, and left the app on the entire time, with
 10 the exception of his one or two-hour breaks. During the entirety of his employment
 11 with UBER, Plaintiff GLINOGA earned approximately \$700.00 per week (Sunday
 12 through Saturday), for working a total of approximately 67 hours worked a week on
 13 average, 27 of which were subject to a . Accordingly, Plaintiff GLINOGA was
 14 earning approximately \$10.44 per hour while employed by UBER. Often times, a
 15 third or more of Plaintiff GLINOGA’s earnings were used to pay for gas for his
 16 vehicle.

17 148. Moreover, Plaintiff NEELY consistently worked six days a week while
 18 employed by UBER, during a work week of Sunday through Saturday. From
 19 Monday through Friday, Plaintiff NEELY regularly left his house, got in his car,
 20 and turned the UBER application “on” at approximately 7:00 a.m. Plaintiff NEELY
 21 left the application “on” all day, while he was either transporting passengers, or
 22 waiting for his next customer to request a ride. From Monday through Friday,
 23 Plaintiff NEELY regularly turned the UBER application off for approximately one
 24 hour around 11:30 a.m. or 12:00 p.m. noon, in order to eat something and rest. On
 25 Mondays through Fridays, at approximately 5:00 to 6:00 p.m., Plaintiff NEELY
 26 would set his Uber application to a “destination” filter, which allowed the
 27 application to find him rides that were heading towards his home. Plaintiff NEELY
 28 generally turned his UBER application off and got home at approximately 6:30 p.m.

1 on Monday through Friday, after working approximately ten hours total per day.
 2 On Saturdays, Plaintiff NEELY worked approximately five to six hours total, either
 3 in the morning or in the afternoon, with his UBER application set to “on” the entire
 4 time, with no breaks in between. Plaintiff NEELY did not work on Sundays.
 5 During the entirety of his employment with UBER, Plaintiff NEELY earned
 6 approximately \$85.00 to \$120.00 per day, while working at least ten hours a day.
 7 Accordingly, Plaintiff NEELY was earning approximately \$8.50 per hour (less than
 8 minimum wage) while employed by UBER.

9 149. Moreover, Plaintiff GONZALES worked 7 days a week while
 10 employed by UBER. From Monday through Thursday, Plaintiff GONZALES
 11 regularly left his house, got in his car, and turned the UBER application “on” at
 12 approximately 5:00 a.m. to 10:00 a.m. On Friday through Sunday, Plaintiff
 13 GONZALES left the application “on” from 3:00 pm to 3:00pm, with rare breaks
 14 during slower times. Plaintiff GONZALES, typically worked 40-50 hours a week
 15 (10 of which were overtime hours worked), and about 15 times a year would work
 16 50-60 a week (10 to 20 of them as overtime hours worked). During the entirety of
 17 his employment with UBER, Plaintiff NEELY earned approximately \$85.00 to
 18 \$120.00 per day, while working at least ten hours a day. Accordingly, Plaintiff
 19 NEELY was earning approximately \$8.50 (less than minimum wage) per hour while
 20 employed by UBER.

21 Specific Workweeks of Plaintiff GONZALEZ:

- 22 • July 15 to 22, 2019 he totaled 54h 24m “online” / 38h 53m “active”
- 23 • Oct 21 to 28, 2019 he totaled 44h 10m “online” / 37h 13m “active”
- 24 • Dec 2 to 9, 2019 he totaled 50h 7m “online” / 35h 42m “active”
- 25 • Jan 20 to 27, 2020 he totaled 66h 4m “online” / 39h 15m “active”

27 25-156. These differential demonstrate how Plaintiff GONZALEZ
 28 waiting hours in a work week for which they were not compensated as “waiting

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time,” thus leading to a failure to be paid minimum wage, as well as failure to pay at an overtime rate for applicable hours worked over 40 in a work week.

157. Specifically, Plaintiffs GLINOGA, GONZALES, and NEELY have been driving for Defendants prior to March 1, 2019 continuing up to and until approximately March of 2020. During the entirety of his employment, Plaintiff GLINOGA worked approximately 20 hours of overtime each week on average. During the entirety of his employment, Plaintiff GONZALES worked approximately 10 to 20 hours of overtime each week on average. During the entirety of his employment, Plaintiff NEELY worked approximately 15 hours of overtime each week on average. To date, Defendants have not paid Plaintiffs GLINOGA, GONZALES, and NEELY proper overtime pay for the overtime hours they worked.

158. Specifically, Plaintiff GLINOGA worked approximately seven days a week while employed by UBER. From Monday through Thursday, Plaintiff GLINOGA regularly worked from 5:00 p.m. to 12:00 a.m., for a total of approximately seven hours a day. If Plaintiff GLINOGA did not have to report to his day job, he would work on Mondays through Thursdays from approximately 6:00 a.m. to 12:00 p.m., then again from 2:00 pm to 12:00 am, for a total of sixteen hours, with a two-hour break in between. On Fridays, Plaintiff GLINOGA regularly worked from approximately 5:00 p.m. to 2:00 a.m., for a total of approximately nine hours. On Saturdays and Sundays, Plaintiff regularly worked from approximately 10:00 a.m. to 4:00 p.m., then again from 5:00 p.m. to 2:00 a.m., for a total of 15 hours, with a one-hour break in between. During these times, Plaintiff GLINOGA had his UBER application set to “on” while he was either transporting passengers, or waiting for his next customer to request a ride. Plaintiff GLINOGA turned his Uber application “on” at the start of his day, and left the app on the entire time, with the exception of his one or two-hour breaks. During the entirety of his employment with UBER, Plaintiff GLINOGA earned approximately \$700.00 per week, for

1 working a total of approximately 67 hours a week on average. Accordingly,
 2 Plaintiff GLINOVA was earning approximately \$10.44 per hour while employed
 3 by UBER. Often times, a third or more of Plaintiff GLINOVA's earnings were used
 4 to pay for gas for his vehicle.

5 159. Moreover, Plaintiff NEELY consistently worked six days a week while
 6 employed by UBER. From Monday through Friday, Plaintiff NEELY regularly left
 7 his house, got in his car, and turned the UBER application "on" at approximately
 8 7:00 a.m. Plaintiff NEELY left the application "on" all day, while he was either
 9 transporting passengers, or waiting for his next customer to request a ride. From
 10 Monday through Friday, Plaintiff NEELY regularly turned the UBER application
 11 off for approximately one hour around 11:30 a.m. or 12:00 p.m. noon, in order to
 12 eat something and rest. On Mondays through Fridays, at approximately 5:00 to 6:00
 13 p.m., Plaintiff NEELY would set his Uber application to a "destination" filter,
 14 which allowed the application to find him rides that were heading towards his home.
 15 Plaintiff NEELY generally turned his UBER application off and got home at
 16 approximately 6:30 p.m. on Monday through Friday, after working approximately
 17 ten hours total per day. On Saturdays, Plaintiff NEELY worked approximately five
 18 to six hours total, either in the morning or in the afternoon, with his UBER
 19 application set to "on" the entire time, with no breaks in between. Plaintiff NEELY
 20 did not work on Sundays. During the entirety of his employment with UBER,
 21 Plaintiff NEELY earned approximately \$85.00 to \$120.00 per day, while working
 22 at least ten hours a day. Accordingly, Plaintiff NEELY was earning approximately
 23 \$8.50 to \$12.00 per hour while employed by UBER.

24 ~~160.~~ Plaintiffs GLINOVA and NEELY fondly recall working well
 25 over forty (40) hours in a seven-day workweek during the holiday season. For
 26 example, Plaintiff NEELY recalls working over forty (40) hours per week during
 27 the time from December 19, 2017 through January 2, 2018. Plaintiff GLINOVA
 28 also recalls working over forty (40) hours per week during the time from December

19, 2017 through January 2, 2018, as well as the week of October 31, 2016, and the week of November 21, 2016.

~~2-161.~~ At all times relevant, Defendants have also operated under and continue to operate under a common policy and plan of willfully, regularly, and repeatedly failing and refusing to pay overtime compensation at the rates required by Labor Code § 510.

~~3-162.~~ As a result of the unlawful acts of Defendants, Plaintiffs and all FLSA Class Members who opt-in are entitled to recovery in the amounts of their respective unpaid overtime wages, liquidated damages, prejudgment interest, attorneys' fees and costs, and any other relief the Court deems just and proper.

~~4-163.~~ Non-Representative Plaintiffs will be enforcing any of their respective individual rights and remedies for Defendant's violation of unpaid overtime under the FLSA through arbitration.

SEVENTH-SIXTH CAUSE OF ACTION

(Individual and Representative Claim Under the California Unfair Business Practices Act, California Business and Professions Code §§ 17200, *et seq.*)

(GLINOCA, GONZALEZ, and NEELY Against All Defendants)

~~5-164.~~ Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

~~6-165.~~ Defendants, and each of them, are "persons" as defined under Business and Professions Code § 17021.

~~7-166.~~ Plaintiffs are informed and believe and based thereon allege that Defendants committed the unfair business practices, as defined by Cal. Bus. & Prof. Code § 17200, *et seq.*, by violating the laws alleged to have been violated in this Complaint and which allegations are incorporated herein by reference and include, but are not limited to:

- (a) Defendants' policy or practice of not paying Plaintiffs

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1 minimum wages and overtime compensation in
2 violation of California law and FLSA;

3 (b) Defendants' policy or practice of not paying ride-
4 share drivers all their wages due in their final
5 paychecks immediately upon involuntary
6 termination or when 72-hour notice was provided
7 before voluntary resignation, is unlawful under Labor
8 Code §§ 201, 202 and/or 203;

9 (c) Defendants violated Labor Code § 204 by not paying
10 Plaintiffs in a timely fashion;

11 (d) Defendants violated Labor Code §§ 226 by not
12 providing accurate pay stubs; and

13 (e) Defendants violated California Industrial Welfare
14 Commission ("IWC") Wage Order Nos. 4-2001,
15 4-2000, and 4-1998 by not keeping accurate time
16 records;

17 ~~8-167.~~ The practices described above were unfair within the meaning of Cal.
18 Bus. & Prof. Code § 17200, *et seq.*, because the acts were intentionally performed
19 to harm Plaintiffs.

20 ~~9-168.~~ Plaintiffs are informed and believe, and based thereon allege, that the
21 unlawful, unfair, and fraudulent business practices described above present a
22 continuing threat to members of the public because Defendants continue to operate
23 in the illegal manner as alleged above.

24 ~~10-169.~~ Further, such skirting of the California labor laws presents a
25 threat to the general public in that the enforcement of the labor laws is essential to
26 ensure that all California employers compete equally, and that no California
27 employer receives an unfair competitive advantage at the expense of its employees.

28 ~~11-170.~~ As a result of the above-alleged misconduct, Plaintiffs, on behalf

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of themselves and Class Members, have been deprived of lawful wages to which they were entitled. Plaintiffs and Class Members have suffered damages, in an amount to be determined according to proof at trial.

~~12.171.~~ The unfair, fraudulent, and unlawful business practices of Defendants are likely to continue because Defendants appear to have a pattern and practice of committing the same type of misconduct as alleged herein. Therefore, the imposition of a preliminary injunction is justified.

~~13.172.~~ As a direct and proximate result of the above-alleged misconduct, Plaintiffs are entitled to and hereby seek injunctive relief and restitution for, among other things, back pay, and other lost benefits in an amount to be proven at trial from the date *Dynamex* was published to the date of trial.

~~14.173.~~ As a direct and proximate result of the aforesaid acts and conduct of said Defendants, Plaintiffs are entitled to and hereby seek attorneys' fees as permitted by law and as provided for by §1021.5 of the California Code of Civil Procedure.

~~15.174.~~ Non-Representative Plaintiffs will be enforcing any of their respective individual rights and remedies for Defendant's violation of Business & Professions Code § 17200 through arbitration.

//

EIGHTH CAUSE OF ACTION

~~(Individual and Representative Claim Under the Private Attorney General Act, California Labor Code §§ 2698, et seq.)~~

~~(GLINOCA, GONZALEZ, and NEELY Against All Defendants)~~

~~Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein. The Non-Representative Plaintiffs will not be seeking to be representative aggrieved employees for a claim under California Labor Code §§ 2698, et seq. California Labor Code §§ 2698, et seq., the Private Attorney General Act ("PAGA") permits Plaintiffs to recover civil penalties for the violation(s) of the Labor Code.~~

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1 at all times herein set forth, PAGA was applicable to Plaintiff's employment by Defendants.

2 at all times herein set forth, PAGA provides that any provision of law under the California Labor Code
 3 that provides for a civil penalty to be assessed and collected by the LWDA for violations of the
 4 California Labor Code may, as an alternative, be recovered through a civil action brought by an
 5 aggrieved employee on behalf of herself and other current or former employees pursuant to procedures
 6 in California Labor Code section 2699.3.

7 pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved employee," who is
 8 any person that was employed by the alleged violator and against whom one or more of the alleged
 9 violations was committed.

10 Plaintiffs were employed by Defendant and the alleged violations were committed against them during
 11 their time of employment and they are, therefore, Aggrieved Employees. Plaintiffs and other
 12 employees are Aggrieved Employees as defined by California Labor Code section 2699(c) in that they
 13 are all current or former employees of Defendant who are or were employed as misclassified
 14 independent contractors, and one or more of the alleged violations were committed against them.

15 pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including
 16 plaintiffs, may pursue a civil action arising under PAGA after the following requirements have been
 17 met: The aggrieved employee shall give written notice by certified mail (hereinafter "Employee's
 18 Notice") to the LWDA and the employer of the specific provisions of the California Labor Code alleged
 19 to have been violated, including the facts and theories to support the alleged violations. The LWDA
 20 shall provide notice (hereinafter "LWDA Notice") to the employer and the aggrieved employee by
 21 certified mail that it does not intend to investigate the alleged violation within thirty (30) calendar days
 22 of the postmark date of the Employee's Notice. Upon receipt of the LWDA Notice, or if the LWDA
 23 Notice is not provided within thirty three (33) calendar days of the postmark date of the Employee's
 24 Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code
 25 section 2699 to recover civil penalties in addition to any other penalties to which the employee may be
 26 entitled.

27 On or about November 1, 2019, Plaintiffs provided written notice by certified mail to the LWDA and
 28 to UBER of the specific provisions of the California Labor Code alleged to have been violated,

including the facts and theories to support the alleged violations. No notice was provided by the LWDA regarding any intentions to investigate the alleged violations.

Plaintiffs will have satisfied the administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies, for violations of California Labor Code §§ 201, 202, 203, 204, 226(a), 226.8, 510, 1194, 1197, 1198 and 1770-1773 et seq.

Pursuant to California Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiffs and all other Aggrieved employees are entitled to recover civil penalties against Defendants, in addition to other remedies, for violations of California Labor Code §§ 201, 202, 203, 204, 226(a), 226.8, 510, 1194, 1197, 1198 and 1770-1773 et seq.

Further, Plaintiffs are entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code § 2699 and any other applicable statute.

NINTH CAUSE OF ACTION

(Individual and Representative Claim for Injunctive Relief for Violation of California Labor Code § 2750.3 for Misclassification of Employees as Independent Contractors under the ABC Test) (GLINOCA, GONZALEZ, and NEELY Against All Defendants)

Plaintiffs and Class Members re-allege and incorporate by reference the foregoing allegations as though set forth herein.

Plaintiffs and Class Members allege that Labor Code § 2750.3 subdivision (a) states that "a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that all of the following conditions [of the ABC Test] are satisfied:

(A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact. (B) The person performs work that is outside the usual course of the hiring entity's business. (C) The person is customarily engaged in an independently established trade, occupation, or

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1 business of the same nature as that involved in the work
 2 performed. (*Id.*)
 3 Upon information and belief, during all times relevant to this action, Plaintiffs and Class Members,
 4 were willfully misclassified as independent contractors under Labor Code § 2750.3, and they suffered
 5 and continue to suffer damages from not being correctly classified as employees; including, but not
 6 limited to, failure to receive minimum wage, overtime pay and reimbursements.
 7 Specifically, Plaintiffs GLINOCA, GONZALES, and NEELY have been driving for Defendants prior
 8 to March 1, 2019 continuing up to and until approximately March of 2020. To date, Defendants have
 9 continued to willfully misclassify Plaintiffs GLINOCA, GONZALES, and NEELY as independent
 10 contractors and have failed to pay Plaintiffs GLINOCA, GONZALES, and NEELY minimum wage.
 11 To date, Plaintiffs GLINOCA, GONZALES, and NEELY have not been reimbursed by Defendants for
 12 various work-related expenses. During the entirety of their employment, Plaintiffs GLINOCA,
 13 GONZALES, and NEELY allege approximately \$1,000 to \$1,200 total spent per month, out of pocket
 14 on work related expenditures, such as gas, car insurance, car washes and cleanings, vehicle repairs and
 15 maintenance, and cellular phone bills.
 16 For Defendant's misconduct as alleged in this Complaint, Plaintiffs and Class Members seek damages,
 17 penalties, costs, and attorneys' fees pursuant to the Labor Code.
 18 For Defendant's violation of section 2750.3, Plaintiffs and Class Members seek injunctive and
 19 declaratory relief pursuant to subdivision (j), that Plaintiffs and all Class Members have been
 20 misclassified as independent contractors pursuant to section 2750.3's ABC test.
 21 Non-Representative Plaintiffs will be enforcing any of their respective individual rights and remedies
 22 for Defendant's violation of Labor Code § 2750.3 through arbitration.

23 PRAYER

24 1. For damages according to proof, including loss of earnings, deferred
 25 compensation, and other employment benefits, and interest thereon;

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2. For interest provided by law including, but not limited to, Civil Code § 3291;

3. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

4. For statutory penalties pursuant to California Labor Code §226(e);

5. For statutory wage penalties pursuant to California Labor Code §§ 1770-1773;

6. For restitution of unpaid wages to Plaintiff and prejudgment interest from the day such amounts were due and payable;

7. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure § 1021.5;

8. For injunctive relief pursuant to California Labor Code § 2750.3, subdivision (j), and Business & Professions Code § 17200, et seq.;

9. For declaratory relief that UBER's ride share drivers, Plaintiffs and Class Members herein, are not independent contractor, but employees, under the *Dynamex ABC Test*;

10. For civil penalties pursuant to California Labor Code § 2699(a) and/or 2699(f) and (g) in the amount of at least one hundred dollars (\$100) for each violation per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code §§ 201, 202, 203, 204, 226(a), 226.8, 510, 1194, 1197, 1198 and 1770-1773 et seq.;

11. For costs incurred by Plaintiff, including reasonable attorneys' fees and costs of suit, in obtaining the benefits due to Plaintiffs and for violations of Plaintiffs' civil rights as set forth above; and pursuant to the Labor Code §§ 218.5, 218.6, 226(e), 1194(a), 2699; and California Code of Civil Procedure section 1021.5; and

//

1 12. For such other and further relief as the court deems just and proper.
2
3

4 Dated: ~~January 4, 2021~~January 4,
5 ~~2021~~January 3, 2021~~January 1, 2021~~ WEST COAST TRIAL LAWYERS, APLC

6 /s/
7 By: _____
8 Ronald L. Zambrano
9 Attorney for Plaintiffs and Class
10 Members, NICHOLAS JERICO, et al.
11
12
13

14 **DEMAND FOR JURY TRIAL**

15 Plaintiffs hereby respectfully demand a jury trial.
16

17 Dated: ~~January 4, 2021~~January 4,
18 ~~2021~~January 3, 2021~~January 1, 2021~~ WEST COAST EMPLOYMENT
19 LAWYERS, APLC

20 /s/
21 By: _____
22 Ronald L. Zambrano
23 Attorney for Plaintiffs and Class Members,
24 NICHOLAS JERICO, et al.
25
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